



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/644,387

08/20/2003

Judith A. Reichenbach

P-4987P1P1P1

6144

31948 7590 05/28/2008
David W. Highet, VP & Chief IP Counsel
Becton, Dickinson and Company
(Casella & Hespos)
1 Becton Drive, MC 110
Franklin Lakes, NJ 07417-1880

EXAMINER

HANDY, DWAYNE K

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/644,387	Applicant(s) REICHENBACH ET AL.	
	Examiner DWAYNE K. HANDY	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-33 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9, 10, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 7, 9, 10, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gautsch (5,888,831). This rejection was applied to claims 1-4, 7, 9, 10, 13, 14, 24-27 and 29 in the previous Office Action (mailed 11/14/07). It remains in effect for claims 1-4, 7, 9, 10, 13 and 14. Please see Response to Arguments below.

Response to Arguments

3. Applicant's arguments, filed 2/14/08, with respect to claims 24 and 26 have been fully considered and are persuasive. Gautsch does not teach a method in which an inner container or volume is selected to achieve a specified headspace in the container assembly. Therefore, the rejection of claims 24 and 26 has been withdrawn.

4. Applicant's arguments filed 2/14/08 with respect to the rejection of claims 1 and 13 under Gautsch have been fully considered but they are not persuasive. Applicant has argued that Gautsch does not teach a plurality of container assemblies but instead shows different embodiments of the device (Applicant's Response, submitted 8/31/07,

page 11, lines 3-11) and Applicant now argues that Gautsch is completely silent as to the volume required for the two inner containers (12, 12a) shown in Figure 3.

The Examiner agrees that Gautsch is silent as to the numerical value of the volume of containers 12 and 12a. But the Examiner submits that the inner container 12 has an inherently smaller volume than the inner container 12a due to the removal of the spout element. The Examiner also admits that Figures 2B and 3B show two different embodiments of the device. The Examiner ***additionally contends, however, that both of those embodiments are included in the well array disclosed by Gautsch*** in column 8, line 52 – column 12. In this passage, Gautsch teaches that the sample containers 12, 12a and the collection container 11 may be provided in the form of a great number of the sample containers nested in collection containers and held on a support plate. The Examiner considers this to be a teaching of a plurality of assemblies. The first assembly - comprised of container 11 and inner container 12a (Figure 3B) - would have an inner container with a first, larger volume and the second assembly – comprised of container 11 and inner container 12 (Figure 2B) would have an inner container with a second, smaller volume. The Examiner submits that this is what claims 1 and 13 require.

Allowable Subject Matter

5. Claims 15-33 are allowed.

6. Claims 5, 6, 8, 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DWAYNE K. HANDY whose telephone number is (571)272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797

/Dwayne K Handy/
Examiner, Art Unit 1797
May 26, 2008